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No. 83-309

IN THE

Supreme Court of the United States

October Term, 1983

DAVID DUNCAN,

Petitioner,

vs.

HUNTINGTON PARK REDEVELOPMENT AGENCY, a Body Politic,

Respondent.

Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of the United States.

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Statement of the Case.

Respondent desires to amplify and rectify Petitioner's "Statement of the Case", so that the Court may have all relevant facts before it:

1. Petitioner has advised the Court that the subject action was the only redevelopment activity which occurred during the first three years following the adoption of the Huntington Park Industrial Redevelopment Project. To the contrary, Respondent during that period entered into contracts which resulted in many millions of dollars of redevelopment activity, covering many acres, consisting primarily of a new industrial park. The subject action resulted from the first filed eminent domain proceeding. Others have followed. Respondent offers these facts because Petitioner

implies that Respondent has discriminated against him.

2. The trial Court did not find, as Petitioner states, that the taking "was not for a *public purpose*" (emphasis added), but made a finding that there was no *public necessity* for the taking of Petitioner's property.

ARGUMENT.

Petitioner's "Questions Presented for Review" do not logically relate to his "Reasons for Granting the Writ". While the former presents due process questions, almost the whole of the latter argues that the intended use is not a public use and deals not at all with the due process questions.

Petitioner raises the "public use" issue, for the first time, in his petition to this Court. All evidence and argument has pertained solely to the issue of whether Respondent's actions in implementing procedures to attempt to acquire Petitioner's property constituted a gross abuse of discretion.

Petitioner presented no evidence at trial regarding public use or public necessity. Plaintiff presented the only evidence before the Court on public use or necessity. That evidence demonstrated that the project would produce many public benefits, and that the project was necessary to the public.

The trial Court did find that public necessity did not require the proposed project, as indicated at page 5 in Appendix "A" to the Petition. The only evidence on the subject at trial was directly contradictory. All of Petitioner's evidence at trial expounded the argument that Respondent's procedures constituted a gross abuse of discretion.

One of Respondent's grounds for appeal was that the trial Court's finding regarding lack of public necessity was unsupported by any evidence. The Court of Appeal did not address this ground. Instead, it reversed the trial Court on due process grounds, ruling on the principal issue at trial, which issue, couched in slightly different language, is the issue contained in Petitioner's "Questions Presented for Review" before this Court.

Petitioner provides this Court with a wealth of general "public use" verbiage, none of which pertains to due process, and none of which demonstrates that the subject taking

is not for a public purpose. While the petition stops short of making the statement literally, the clear inference is the view that if California law permits this taking, California law violates the United States Constitution. Upholding both the public nature of the taking and the constitutionality of the applicable law is the case of *Redevelopment Agency, etc. v. Hayes*, 122 Cal.App.2d 777, cert. den. 75 S.Ct. 214, 266 P.2d 105,

> "The claim that the Redevelopment Acts because they provide for acquisition of property by eminent domain and its later resale, violate the Fourteenth Amendment to the Constitution in denying to the property owners the equal protection of the law, has been denied in several cases, among others, *Ajootian v. Providence Redevelopment Agency*, supra, 91 A.2d 21; *Nashville Housing Authority v. City of Nashville*, supra, 237 S.W.2d 946; *Belousky v. Redevelopment Authority*, supra, 54 A.2d 277; *Robinette v. Chicago Land Clearance Commission*, D.C. Ill. 1951, 115 F. Supp. 669; . . . . While the decision in the *Robinette* case is merely a 'Memorandum' and is unpublished, it is of value for the reason that in *Robinette v. Campbell*, 342 U.S. 940, 72 S.Ct. 563, 96 L.Ed. 699, the Supreme Court denied motions for leave to file petitions for writ of mandamus to compel the trial judge to expunge his order of dismissal. As said in *Waddell v. Chicago Land Clearance Commission*, supra, 206 F.2d 748, at page 750, where the same federal questions were raised: 'Thus it is seen that the Supreme Court has refused to entertain an application to review the questions which appellants have attempted to present by this action.' As pointed out in those cases, the acquiring of the property is for a public use, its sale and transfer of the property from one individual to another, so far as it may occur, are merely incidental to that use. . . .

> The act does not violate the due process clause of the Fourteenth Amendment to the Federal Constitution. . . ."

Petitioner's argument is at its core the old argument that because Respondent intends to convey the acquired property to a private party, the project has no public purpose.

The small portion of the petition which pertains specifically to aspects of the procedure also is not persuasive. Petitioner's statement, at page 9 of the petition, that Respondent agreed in writing to acquire Petitioner's property prior to informing Petitioner of his right to oppose the acquisition, is not sustained. (Please see evidence at trial recited in the Court of Appeal's Opinion at pages 8 and 9 of Appendix "C" to the Petition.) The evidence is also that:

1. Beginning in 1977 Respondent gave Petitioner the opportunity to indicate an interest in participating in the redevelopment program. Petitioner never indicated any interest in doing so until the commencement of these proceedings.

2. Respondent selected the proposed project and agreed to proceed after weighing the merits of the proposed project versus the alternative project proposed by Petitioner. Respondent based its decision on the analysis of an expert consultant retained to compare the relative public benefits of the two proposals, who found substantially greater public benefit in the project selected.

3. Petitioner was represented by counsel at all phases of these proceedings.

4. The consultant's analysis found that Petitioner's proposed project could still be completed on Petitioner's remaining land after this taking.

Respondent was afforded adequate procedural opportunities. Petitioner's argument always has been in essence that

it was illegal for Respondent to select another project as long as Petitioner, the owner, had any competing proposal. This contention was rejected by the Court of Appeal in its ruling that Respondent's conduct satisfied due process requirements.

Petitioner has not provided this Court with any reason justifying this Court's review of this case. The Court of Appeal decision is not in conflict with any other decision, and has the implied approval of a Unanimous State Supreme Court. Similarly, this case is of limited importance, in that these disputes are rare (there are no other Appellate opinions on the subject Code Section.) When disputes occur they turn on the specific facts involved and not on general law.

In conclusion, the additional reason for which this Court should deny the petition is that, as demonstrated by all the material submitted, the unanimous decision by the Court of Appeal was correct and not in violation of the U.S. Constitution.

Respectfully submitted,

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